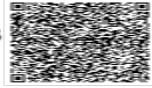


2024:PHHC:101456-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRA-AD-29-2024(O&M)**

**Date of Decision:01.08.2024**

K Through her mother being natural guardian ...Appellant

Versus

STATE OF HARYANA AND ORS ...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH  
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Ms. Gursimran Walia, Advocate,for theapplicant.

Mr. Manish Dadwal, AAG, Haryana.

**SUDHIR SINGH, J.**

The instant appeal has been preferred against the judgment dated 31.10.2023 passed by the learned Additional Judge, Palwal, whereby respondent nos. 2 and 3 were acquitted of the charges under Sections 363, 506(II), 212 IPC and Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Vide order dated 16.05.2016, the lower Court records was called for. The same has been received.

3. As per the case of the prosecution, the complainant (victim) moved a complaint on 29.03.2022 to the police, stating therein that respondent No.3 committed a rape upon her and when she refused to meet him, he cut his veins. It was further stated that when she did not talk to accused-respondent No.3, he gave her a cycle and

mobile phone and then he again committed rape upon her. Thereafter, he took her to OYO Hotel on 18.03.2022, wherein he booked Room No. 214. He threatened to kill her with knife, if she had disclosed the incident to anyone.

4. On the basis of the aforesaid complaint, FIR No.30 dated 29.03.2022 under Sections 376, 506, 212 IPC and Section 6 of the POCSO Act, was registered at Police Station Women, Palwal. During investigation, the victim was medico legally examined at Government Hospital, Palwal and her statements were recorded before the Legal Aid Counsel, the Learned Magistrate and the Child Welfare committee. Respondent No.2 was arrested on 02.02.2023, for the commission of offence under Section 212 IPC, whereas respondent No.3 was arrested on 11.03.2023. After investigation, the charge sheet was filed. Charges under Sections 363, 506, 212 of IPC and Section 6 of the POCSO Act were framed against the accused, to which they pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined as many as 17 witnesses i.e. PW-1 Ms. Rachna Sorout, Member, Child Welfare Committee; PW-2 Sukhbir; PW-3 Ravinder Kumar Jain; PW-4 Ravinder, Draftsman; PW-5 SI Virender Singh; PW-6 SI Rajma Devi; PW-7 SI Resham; PW-8 ASI Anita; PW-9 Mother of the Victim; PW-10 SI Rekha Devi; PW-11 Aakash, owner of OYO Hotel; PW-12, the Victim; PW-13 Sh. Vikas Verma, learned Magistrate; PW-14 Dr. Arun Singh, Medical Officer; PW-15 Ms. Harmeet Kumari, Legal Aid Counsel; PW-16 Dr. Nidhi Sorout and PW-17 Inspector Sushila Devi. Further, the prosecution produced documentary evidence in the form

of Ex. P1 to P-16/1 and Ex. MO/1. Thereafter, the statements of the accused under Section 313 Cr.P.C. were recorded and the entire incriminating material was put to them, which they denied and pleaded false implication.

6. The trial Court acquitted the accused of the charges framed against them on the following grounds.

- i) The victim, while appearing as PW-12 deposed that the accused did not commit any such offence. There is no other eye-witness to the alleged incident, who could link the accused with the offence.
- ii) PW-16 Dr. Nidhi Sorout, before whom the victim was brought for medical examination, deposed that the victim had refused from getting herself medico-legally examined.
- iii) The testimony of the mother of victim cannot be relied upon being a hearsay witness.
- iv) The entries of the hotel register (Ex. PW11/1 and Ex. PW11/5) were not proved by examining the person (Manager of the Hotel), who had recorded such entries.
- v) There is no evidence that Respondent No.2 has harboured respondent No.3, except for his disclosure statement which is inadmissible.

7. Learned counsel appearing for the appellant vehemently submits that the prosecution has proved the guilt on the part of the accused, inasmuch as PW-16 Dr. Nidhi Sorout, who had medico-legally examined the victim, had opined that the possibility of penetrative sexual activity could not be ruled out. It is further submitted that PW-13 the then JMIC, Palwal and PW-15 Legal Aid Counsel, DLSA, Palwal, have categorically deposed that the victim had made statement(s) before them regarding the alleged offence having been committed with her by the accused. Therefore, there was no occasion for the trial Court to record the finding of the acquittal against the accused.

8. We have heard learned counsel for the appellant and have also gone through the records of the case. The sole question that arises for consideration in the present appeal is whether the finding of acquittal recorded by the trial Court, requires any interference by this Court.

9. A perusal of the findings recorded by the trial Court would show that the prosecution has failed to prove the guilt on the part of the accused. The victim in her initial statements before the police and the Magistrate stated that she had been sexually assaulted by the Respondent No.3 Hariom, but while appearing as PW12, she stated that the accused did not commit any wrong act with her. She was, accordingly, declared hostile. As regards, accused-respondent No.2, it was found that there was no evidence on record, except the disclosure statement of the accused made in police custody, which

was not admissible as there was no discovery of any fact, pursuant to the said disclosure statement.

10. Dr. Nidhi Sorout, appeared as PW16 before the trial Court and had deposed that the victim had refused from getting medico-legally examined. We have ourselves perused the MLR (Ex.PW16/1 on the trial Court record). It shows that the General Physical Examination of the victim was done, but as against medical examination columnn it has been specifically noticed - 'Refusal for Examination'. Thus, there is no medical evidence on record to suggest that the victim had been subjected to a sexual assault.

11. The learned trial Court has rightly held that mother of the victim examined as PW-9, is only a hearsay witness. The entries in the hotel register were rightly discarded as the same were not proved by examining the person, who had recorded the same.

12. The findings recorded by the learned Trial Court are plausible one, based on the evidence led. It could not be pointed out that any material evidence has been misread or not taken into consideration by the trial Court. Therefore, no fault could be found in the findings of the trial Court that the accused is entitled to benefit of doubt.

13. In criminal appeal against acquittal what the appellate Court has to examine is whether the finding of the learned Court below is perverse and prima facie illegal. Once the appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of

the caused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of **Mrinal Das versus State of Tripura**, (2011) 9 SCC 479, it has been observed that:

*“13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final Court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate Court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent Court. If two reasonable views are possible on the basis of the evidence on record, the appellate Court should not disturb the findings of acquittal.*

*14. There is no limitation on the part of the appellate Court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate Court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doingso. If the order is “clearly unreasonable”, it is a compelling reason for interference. ... ..”*

In the case of **Ghurey Lal Vs. State of Uttar Pradesh**, (2008) 10 SCC 450 in para no. 75, the Hon'ble Supreme Court reiterated the said view and observed as follows:

*"75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate Court should be slow to interfere with the decisions*

*of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."*

14. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds.

15. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present appeal is dismissed.

[ SUDHIR SINGH ]  
JUDGE

[ KARAMJIT SINGH ]  
JUDGE

01.08.2024  
Himanshu

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No